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International Civil Aviation Organization

# Legal Committee 37th Session

Montréal, 4-7 September 2018

## Report

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and Spanish editions by the  
INTERNATIONAL CIVIL AVIATION ORGANIZATION  
999 Robert-Bourassa Boulevard, Montréal, Quebec, Canada H3C 5H7

For ordering information and for a complete listing of sales agents  
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**Doc 10114, *Report of the Legal Committee***

Order Number: 10114

ISBN 978-92-9258-602-7

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## REPORT OF THE 37TH SESSION OF THE LEGAL COMMITTEE

### Letter of Transmittal

To: President of the Council  
From: Chairman of the Legal Committee

I have the honour to submit, in accordance with Rule 46 of the *Rules of Procedure of the Legal Committee*, the Report of the 37th Session of the Legal Committee.



Terry Olson

Paris, 30 October 2018



## LEGAL COMMITTEE – 37TH SESSION

(Montréal, 4 – 7 September 2018)

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## 1. Place and Duration

1.1 The 37th Session of the Legal Committee was held in Montréal from 4 to 7 September 2018. The Chairman of the Legal Committee, Mr. Terry Olson (France), presided over the Session.

## 2. Opening Addresses

2.1 The meeting was declared open by **the Chairman of the Legal Committee. The President of the Council, Dr. Olumuyiwa Benard Aliu**, welcomed all delegates and observers and appreciated the large number of participants from both Member States and Observers. He emphasized the importance of the Legal Committee and the work conducted in the legal field, underlining the fact that ICAO relied for more than 70 years on the advice, studies and recommendations of the Committee in the fulfillment of the objectives of the Organization. He reiterated the important role the Legal Committee has played in the adoption of some twenty-four international air law instruments and averred that a number of them, particularly those related to international aviation security, now belong to the most widely accepted treaties in the international community. He stated that the current work of the Committee is expected to focus on issues of great importance to the aviation community with a high impact on both the safety and security of international civil aviation.

2.2 The President drew the attention of the participants to the first item on the General Work Programme, the study of legal issues relating to remotely piloted aircraft systems – ‘RPAS’, emphasizing the rapid development of this industry.

2.3 Dr. Aliu noted that conflicts of interest in aviation was also for discussion by the Committee, pointing out the fact that conflicts of interest is a cross-cutting issue that concerns all aspects of aviation activities and therefore calls for a multidisciplinary approach. Mention was made of Assembly Resolution A 39-8, which urges States to establish a framework on conflicts of interest that applies to civil aviation activities.

2.4 “Acts or offences of concern to the international aviation community not covered by existing air law instruments” was presented by the President of the Council as the third item on the General Work Programme. He encouraged the Member States to ratify the Protocol adopted in 2014 amending the *Convention on Offences and Certain Other Acts Committed on Board Aircraft*, commonly known as the Tokyo Convention, as only eight more ratifications are needed for the Protocol to enter into force. As far as the activity of the Task Force on Legal Aspects of Unruly Passengers is concerned, the President informed the Committee that it will be presented with a progress report which will cover aspects related to the draft Manual on the Legal Aspects of Unruly and Disruptive Passengers.

2.5 As regards the item dealing with Article 21 of the Chicago Convention, the President recalled that the item was added during the 39th Session of the Assembly which led to the establishment of the Article 21 Task Force. He noted that the Committee will be presented with a progress report concerning the work of the Task Force for consideration.

2.6 Mention was also made of the other items on the Work Programme, including “Safety aspects of economic liberalization and Article 83 bis”. As regards the item “Promotion of the ratification of international air law instruments”, the President recommended to all States which have not yet done so to ratify most urgently the two Protocols amending Articles 50 (a) and 56 of the Chicago Convention, respectively.

2.7 Recalling that Article 84 of the Chicago Convention mandates the Council to settle disputes between Contracting States, the President noted that the relevant *Rules for the Settlement of Differences* were only once amended in 1975; in this respect the Committee will be invited to consider a working paper on the review of said Rules.

2.8 Lastly, Dr. Aliu mentioned that the Committee would also be invited to consider emerging legal issues relating to cyber-safety/security and sub-orbital flights with a view to facilitating that ICAO remains at the forefront of new development in the field of international air law.

2.9 Noting that ICAO Member States and the Council had high expectations regarding the outcome of the Committee's deliberations, the President advised that the results of the work would be reported to the Council, and to the Assembly which will meet in Montreal in one year's time.

2.10 The President recognized the remarkable work of the Chairman of the Legal Committee, Mr. Terry Olson, who was chairing his last Session of the Legal Committee, and conveyed his deepest appreciation for Mr. Olson's remarkable patience, keen intellect and outstanding leadership.

2.11 The Chairman expressed his thanks to the President for his clear and concise remarks about the work of the Legal Committee as well as for the appreciation expressed. Further on, the Chairman invited the Secretary General of ICAO to address the Committee.

2.12 Dr. Fang Liu, Secretary General, also welcomed all the participants and stressed the importance of the work the Committee undertook for international aviation. She extended her deepest appreciation for the work of the Chairman and expressed her trust in the Committee's ability to successfully complete its work in the following days.

2.13 Upon suggestion by the delegation of the United States, the Committee observed a minute of silence in order to pay tribute to Dr. Michael Milde, the former Director of the Legal Bureau of ICAO and former Director of the Institute of Air and Space Law at McGill University.

### 3. **Agenda and Working Arrangements**

3.1 In presenting the provisional Agenda shown in LC/37-WP/1-1, the Chairman informed the Committee that item 6 would be renumbered as item 7 and that new item 6 would be named 'Any other business' so as to accommodate three additional topics, namely (1) cyber safety and security, (2) settlement of differences and (3) space flights. With this addition, the Agenda was adopted and can be found at **Appendix A** to this Report.

3.2 Following a query by one delegation, the Chairman explained that the report of the Legal Committee will be submitted to the Council for its consideration with a view to determining the work of the Legal Commission for the upcoming Assembly.

3.3 The working papers considered by the Committee are listed by agenda items in **Appendix B** to this Report.

3.4 The action taken by the Committee in respect of each item is reported on separately in the Report.

#### 4. **Meetings**

4.1 The Committee held six meetings, all of which were held in open sessions.

4.2 The Secretary of the Committee was Dr. Jiefang Huang, Director of the Legal Affairs and External Relations Bureau. Mr. Benoit Verhaegen, Senior External Relations and Legal Officer and Mr. Arie Jakob, Senior Legal Officer were Deputy Secretaries. Mr. Christopher Petras and Mr. Andrew Opolot, Legal Officers, as well as Mr. John Thachet, Ms. Marla Weinstein, Mr. Mohamed Mansoor Al-Raqaiishi, Mr. Yaw Nyampong, Mr. Ali Hashem, Mrs. Diana Brookes, Mr. Silverio Espinola and Mrs. Soaran Paun Pop were Assistant Secretaries. Other officials of the Organization also provided services to the Committee.

#### 5. **Representation of States and International Organizations**

5.1 Seventy Member States and eight international organizations were represented by 170 representatives and observers at this Session of the Legal Committee. The names of the representatives and observers appear in **Appendix C** to this Report.

#### 6. **Records of Proceedings**

6.1 The Committee decided that in application of Rule 45 of its Rules of Procedure, the minutes of the 37th Session need not be prepared.

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**Agenda Item 2:            Consideration of the General Work Programme of the Legal Committee****Study of legal issues relating to remotely piloted aircraft**

2:1            The Secretariat presented LC/37-WP/2-1, to which was appended a summary of the results of the State responses to the Remotely Piloted Aircraft Systems (RPAS) Legal Survey distributed to Member States on 29 August 2016, the aim of which was to gather information on national RPAS legislation, and to identify potentially relevant international legal issues. The paper concluded that based on the analysis of the results of the Survey, it appeared to the Secretariat that there were currently no international legal issues that urgently needed to be addressed through the development of new treaties or protocols, although the Legal Committee was invited to evaluate whether there were other legal issues that needed to be considered. The paper also drew attention to work by the Secretariat on a proposal to amend Annex 2 to give a blanket authorization to certain unmanned aircraft systems (UAS) operations over the high-seas in order to bring them legally and, safely within the ambit of the Convention.

2:2            China introduced LC/37-WP/2-2 co-sponsored by Italy, Israel and Turkey, which invited the Committee to establish an Unmanned Aircraft System Task Force or Working Group to address legal challenges related to the international operation of RPAS/UAS. The Committee then turned to LC/37-WP/2-5, which was presented by the Czech Republic and co-sponsored by France, Hungary and Poland concerning the applicability of the Chicago Convention and Standards and Recommended Practices (SARPs) with respect to smaller RPAS/UAS as well as with respect to the nature of the authorization required under Article 8 of the Chicago Convention.

2:3            The United States presented LC/37-WP/2-8 which recommended an approach for ICAO and States to enable expanded UAS operations over the high seas, in order to accommodate their continued integration into the aviation sector. The United States indicated that an acceptable solution to the shortfall in existing provisions in this area was identified in paragraph 5.3 of the Secretariat paper.

2:4            The United Arab Emirates introduced LC/37-IP/4 which discussed some legal implications with respect to the introduction of unmanned aerial taxis and called for their inclusion in the study relating to UAS.

2:5            The Committee also benefitted from a Secretariat presentation on the technical work of ICAO related to RPAS, including that of the Remotely Piloted Aircraft Systems Panel (RPASP) and its working groups.

2:6            In the ensuing discussions, while there was acknowledgment that the analysis of the Survey results by the Secretariat had been thorough and informative, there was a strong expression of interest by many States in identifying potentially relevant international legal issues related to unmanned (pilotless) aircraft, as well as concerns raised by some States about the scope, application, and relevance of the Chicago Convention and other international air law instruments in this regard. On the scope of future work, a number of delegations expressed the view that it should not entail amendment of the Chicago Convention or other international air law instruments, including the existing definition of “aircraft” contained in Annex 7 to the Convention. Other delegations, however, expressed support for consideration of the interpretation or applicability of certain provisions of current international air law Conventions with regard to RPAS/UAS, more specifically Article 8 of the Chicago Convention and the Annex 7 definition of “aircraft”. Other areas proposed for consideration included the application of the concept of nationality to RPAS/UAS, the use of RPAS/UAS for transporting cargo and passengers, insurance, and regulatory oversight.

2:7 Many delegations mentioned the very rapid of development of RPAS/UAS and the need, as far as possible, for the Committee's work to keep pace with those developments. There were varying views as to what form the body tasked with this further legal work should take. A number of delegations proposed the establishment of a working group or task force that would have clear and defined deliverables and a specific time-frame; the formation of a study group that would have more flexibility to address emerging issues was also proposed.

2:8 Several delegations drew the Committee's attention to ICAO's on-going work in this area and, in particular, that of the RPASP, and emphasized the need for the Committee's efforts to compliment this on-going work, with a few delegations going further and proposing that the proposed working group should align and coordinate its work with that of the RPASP. A further suggestion was made that the working or study group could be composed of both legal and technical experts.

2:9 In summarizing the discussion, the Chairman took note that this item had generated interest from a large number of delegations and that the discussions had covered a wide range of subjects. He further noted that all delegations had highlighted the need for the Committee's future legal work related to RPAS to be closely coordinated with other ICAO bodies working on this topic, such as ANB and LEB, in order to avoid the duplication of efforts. He stressed that this method will allow for a synergy between the technical work and the legal approach. The Chairman also emphasized that, at this stage, a significant number of delegations did not foresee the need for any amendment to the Chicago Convention, nor for the development of a new international air law instrument with respect to RPAS/UAS.

2:10 In order to advance the Committee's work under this item, and as proposed by several delegations, the Chairman suggested that the Committee establish a working group which will have the mandate to examine legal issues related to RPAS, including those discussed in the papers presented under this item. The Chairman proposed that a small group be established to develop the terms of reference of the working group, for their approval by the Plenary. There being no objections with respect to this proposed approach, a small group made up of nine States (Argentina, China, Czech Republic, France, Indonesia, Nigeria, Russian Federation, United States and United Arab Emirates) was established, taking into account geographical representation.

2:11 Under the Chairmanship of the delegate of Argentina, the small group met three times over the course of the next 24 hours before the item was resumed later in the Session, with the presentation of draft *Terms of Reference (TOR) for the Working Group to Address International Legal Aspects of Unmanned (Pilotless) Aircraft Operations and Integration into Civil Aviation*. Following consideration, the Committee approved the TOR as amended (see final text in Appendix D).

### Consideration of guidance on conflicts of interest

2:12 The Secretariat introduced Paragraph 2 of LC-37-WP/2, Revision No. 1 highlighting that since the 36th session of the Legal Committee held in December 2015, the ICAO Assembly in 2016 adopted Resolution A39-8 which established the future work of the Organization on the topic of conflicts of interest in civil aviation (COI). As part of the work, the Secretariat has developed a compilation of ICAO provisions which is attached to the working paper as Appendix A (*ICAO Guidance on Conflicts of Interest in Civil Aviation*). Given that the COI provisions are prevalent in three Annexes and several ICAO manuals, continuous monitoring of changes in these publications and periodic revisions would be needed to ensure that the compilation remains up-to-date. The compilation of ICAO provisions on COI will be made available through the ICAO website. Regarding further work such as the collection, analysis, dissemination and promotion of best practices addressing COI, the Secretariat indicated that this may not be achieved until